

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

United States of America

v.

Johnny Junior Duncan

Crim. No. 4:09-cr-00950-TLW-8

Order

This matter is before the Court on Defendant's motion for a sentence reduction pursuant to the First Step Act of 2018. For the reasons set forth in detail in the Court's prior order and the Fourth Circuit's recent decision in *United States v. Wirsing*, 943 F.3d 175 (4th Cir. 2019), the Court concludes that he is eligible for a reduced sentence. ECF No. 602. The Court has carefully considered the additional filings submitted in response to the Court's order. *See* ECF Nos. 604, 605.

Though Defendant is eligible for a sentence reduction, a reduction is not automatic. Section 404(c) of the First Step Act explicitly provides that "[n]othing in this section shall be construed to require a court to reduce any sentence pursuant to this section." Notably, *Wirsing* did not address whether that particular defendant's sentence should have been reduced, only that he was eligible for consideration. *See Wirsing*, 943 F.3d at 186.

In considering whether to reduce Defendant's sentence, the Court has carefully reviewed the Presentence Investigation Report and Sentence Reduction Report, and has considered the current statutory range, the Guidelines range, the § 3553(a) factors, and evidence of post-sentencing mitigation. In light of these considerations, the Court concludes that a sentence reduction is not appropriate in this case. There

are several reasons why the Court has reached this conclusion, including (1) he was held accountable at sentencing for a crack weight (1,012 grams) that would have supported a charge to the current threshold amount (280 grams); (2) application of the First Step Act does not change his Guidelines imprisonment range because he remains a career offender; (3) he has a prior drug distribution conviction; and (4) he has multiple prior serious assault and weapons convictions, including assault with a deadly weapon and CDV. For these reasons, the Court declines to reduce his sentence, and his motion, ECF No. 571, is therefore **DENIED**.

IT IS SO ORDERED.

s/ Terry L. Wooten
Terry L. Wooten
Senior United States District Judge

December 11, 2019
Columbia, South Carolina